

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35042

U S RAIL CORPORATION
-- LEASE AND OPERATION EXEMPTION --
SHANNON G., a New Jersey limited liability company

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10902 and 49 CFR 1150.41

REPLY OF U S RAIL CORPORATION TO
"OPPOSITION STATEMENT" OF THE CITY OF PATERSON, NEW JERSEY

220076
ORIGINAL
RECEIVED
AUG 17 2007
MANAGEMENT
STR

ENTERED
Office of Proceedings
AUG 17 2007
Part of
Public Record

Submitted By:
John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
(202) 296-3334

Counsel for Petitioner

James H. M. Savage, Esq.
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
(202) 296-3335

Of counsel

Due: August 17, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB FINANCE DOCKET NO. 35042

U S RAIL CORPORATION
-- LEASE AND OPERATION EXEMPTION --
SHANNON G., a New Jersey limited liability company

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10902 and 49 CFR 1150.41

REPLY OF U S RAIL CORPORATION TO
"OPPOSITION STATEMENT" OF THE CITY OF PATERSON, NEW JERSEY

INTRODUCTION

U S Rail Corporation ("U S Rail") submits this filing in response to a pleading submitted by the City of Paterson, NJ,¹ entitled "Opposition Statement of the City of Paterson, New Jersey" and filed with the Board on July 25, 2007. Because Paterson's "Opposition Statement" is really a Petition to Reject or Revoke, U S Rail sought and the Board granted² leave to reply and a short extension until

¹ Hereafter "Paterson" or "the City"

² Granted in an order served August 3, 2007.

August 17, 2007, for U S Rail to submit its reply. U S Rail now responds to the merits of Paterson's protest.

BACKGROUND

For a rather simple case, this proceeding has a rather convoluted history.

As the Board will recall, U S Rail, an existing class III short line rail carrier with operations in central Ohio, originally filed a Verified Notice of Exemption under 49 CFR 1151.41 on June 6, 2007, to lease and operate a 1,400 foot private siding under construction in Paterson, NJ. Shannon G ("SG"), a New Jersey-based real estate firm, was building the track that is the subject of this proceeding on its land as a private siding to serve a transload facility that it was developing. U S Rail represented in its Verified Notice of Exemption that it had executed a Railroad Operating and Property Lease Agreement with SG for the common carrier lease and operation of a rail-served transload terminal in Paterson, NJ, that SG is currently constructing the subject trackage as a private railroad outside the regulatory jurisdiction of the Board, and that it [U S Rail] would hold itself out as the exclusive provider of common carrier rail freight service at this facility.

By decision served June 15, 2007, the Board stayed U S Rail's exemption until further notice and asked it to submit supplemental information describing, in detail, why SG's track qualifies as a private line of railroad. U S Rail submitted that information on July 2.

Initially, only two parties submitted comments in response to U S Rail's exemption notice, the New York Susquehanna & Western Railway Company ("NYS&W")³ and the City of Paterson.⁴ Then, most recently, on August 10, 2007, the New Jersey Department of Environmental Protection ("NJDEP") petitioned the Board to intervene and reply to the Board's request for supplemental information. U S Rail will respond on or before August 30, to NJDEP's Petition.

ARGUMENT

Paterson's "Opposition Statement" presents the basic question of whether or not the Board should reject U S Rail's notice of exemption. Under the Board's rules and precedent, the standard for revoking an exemption is

³ NYS&W briefly stated that although it has engaged in verbal negotiations with U S Rail regarding the potential track layout at the Paterson, NJ, site, no agreement has as yet been reached. NYS&W went on to say that it would be prepared to negotiate appropriate arrangements to permit service to the facility described in U S Rail's exemption should U S Rail obtain STB authority to operate and construct the subject rail facilities.

⁴ The City filed a "Notice of Intent to Participate & Certification of Service" on June 26, 2007, and its "Opposition Statement" on July 26, 2007.

whether regulation is needed to carry out the rail transportation policy. The party seeking revocation has the burden of proof and petitions to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted. See, Minnesota Comm. Ry., Inc.-Trackage Exempt.-BN RR.CO., 8 I.C.C.2d 31, 35 (1991) and cases cited therein. For the reasons discussed below, U S Rail submits that the City has failed in that burden and that its "Opposition Statement" must therefore be rejected.

The thrust of Paterson's "Opposition Statement" is that U S Rail's notice of exemption must be rejected because it contains false or misleading information. The City then goes on to blame U S Rail for making 10 allegedly false "assertions" and "omissions." At no point does the City mention, let alone, address the Board's standard for revocation, cite any cases addressing the revocation standard, or show any need for Board regulation. Rather it nitpicks on a host of assertions some of which are themselves false, and some are true but immaterial. Additionally, Paterson challenged U S Rail's exemption request on the grounds that the foreseeable environmental effects are subject to Board review. No review is required

because U S Rail's proposed operation does not generate the amount of traffic that would trigger those thresholds.

In support of its argument, U S Rail attaches the verified statement of its President Gabriel Hall which addresses each of these assertions and omissions. U S Rail incorporates references to Mr. Hall's statement in its argument as appropriate.

1. Assertions Regarding NYS&W

The City implies that U S Rail's notice falsely claims that there is an agreement in existence with the New York, Susquehanna & Western Railway ("NYS&W") for interchange of traffic. See Hall statement at paragraph 4.

At no point did U S Rail state that it had executed an agreement with NYS&W. It stated that it had executed a lease and operating agreement with the property owner, Shannon G, and that it *will interchange* traffic with the NYS&W. NYS&W correctly characterized the status of interchange arrangements when it stated in its letter to the Board dated June 11, 2007, that

"[a]lthough NYS&W has engaged in verbal negotiations with U S Rail in regard to the potential track layout at the Paterson, New Jersey, site described in the U S Rail filings, no agreement has been reached. Accordingly, NYS&W wishes to clarify that although is prepared to honor its common carrier obligation, there exists today no switch from NYS&W's lines into the property at issue, nor are

there any U S Rail tracks on NYS&W's property that would permit interchange of traffic. Similarly, NYS&W has no agreements with U S Rail, whether for the interchange or switching of traffic or any other purpose."

"[i]f U S Rail were to obtain authority to operate and construct the rail facilities it describes in its Application, NYS&W would be prepared to negotiate appropriate arrangements to permit service to the facility described in the exemption submissions."

See NYS&W letter to the Board dated June 11, 2007.

Moreover, as the Board noted in its recent New England Transrail decision⁵ in response to arguments that it cannot grant entry authority to a prospective railroad absent the existence of an interchange agreement,

"NET is not now a rail carrier, but should we decide to grant it the necessary authority to become a rail carrier, connecting carriers would then be required to provide for the interchange of traffic from NET. See 49 U.S.C. 10742. Thus, it does not matter that no interchange agreement is yet in place." Slip op. at 12.

2. Identification of Property Owner

Paterson then questions the legitimacy of SG as "a business entity of uncertain identity," whatever that means, on account of a typographical error in SG's address appearing in the exemption notice. The correct address for

⁵ Cited as New England Transrail, LLC, a/b/a Wilmington & Woburn Railway - Construction, Acquisition, and Operation Exemption - In Wilmington and Woburn, MA, STB Exemption Docket No. 34797 (served July 10, 2007).

SG is 692-694 Main Avenue, Passaic (not Paterson), NJ 07055. Moreover, the other owner of SG is Stewart Kennedy, 55 Sleepy Hollow Drive, Wayne, NJ 07470. Mr. Kennedy is employed by the City of Passaic as a police officer. See Hall statement at paragraph 5.

3. Commodities to be Transported

Here the City challenges the truthfulness of U S Rail's statements as to the traffic it plans to handle by attaching the verified statements of two individuals (Wagner and Smith) indicating that SG's purpose in acquiring the land to be leased to U S Rail was to facilitate the loading and transfer of construction and demolition debris. Inasmuch as it is the City that has submitted their statements, they must be discounted as self serving. Moreover, they are of limited utility as U S Rail has had no opportunity to challenge these witnesses or cross-examine them.

These statements are not entitled to any weight. At no time has U S Rail stated that it contemplates transloading waste at the Paterson facility. In fact, it has advised the Board that it does not seek to transload or handle waste. Similarly, it has unaware of representations

by others on its behalf regarding the transloading of waste. See Hall statement at paragraph 6.

4. Foreseeable Environmental Effects

Paterson would have the Board believe that U S Rail's exemption requires environmental review as to both air and noise pollution. While the Board should disregard this contention as untrue, it should not fault Counsel for Paterson who is obviously unfamiliar with the Board's environmental regulations at 49 CFR Part 1105 as well as the pertinent case law.

The pertinent regulation is 49 CFR 1105.7 which gives the Board the ability to regulate and impose environmental conditions on rail transactions under certain circumstances. Under that regulation the Board can review for environmental compliance and impose appropriate relief in rail transactions involving air pollution in nonattainment areas such as northern New Jersey where the proposed action will result in either an increase in rail traffic of at least 50% or an increase of at least three trains per day (round trips) on any segment of rail line, an increase in rail yard activity of at least 20% in carloads, or an average increase in truck traffic of more

than 10% of the average daily traffic or 50 vehicles per day on a given road segment. Should this transaction be regarded as analogous to either rail construction or the reinstatement of service over a previously abandoned line, the Board environmental regulation is only implicated where the amount of traffic to be handled exceeds three trains per day. 49 CFR 1105.7(d)(5)(ii). Moreover, Board environmental regulation over noise is not triggered because the thresholds of 49 CFR 1105.7(d) have not been met. 49 CFR 1105.7(d)(5) and (6).

U S Rail's Gabe Hall testifies that the amount of traffic anticipated will run about 2,000 car loads per year. Assuming daily service, five days per week 50 weeks per year, the daily traffic volume will be eight cars per day, sufficient for one round trip per day, but not three or more. Further, assuming that each one of those car loads represents four inbound or outbound trucks, the rail traffic translates into 32 truck loads. Accordingly, there is no basis for Board review insofar as the projected traffic falls way below the Board's environmental thresholds. Morristown & Erie Railway - Modified Certificate, STB Finance Docket No. 34054, served June 22, 2004.

Aside from the fact that there is no regulatory basis for Board review of any noise pollution,⁶ Paterson's arguments for such regulation contain disturbing distortions of fact, specifically the suggestion that the dominant land use is residential and that there are nearby athletic fields where small children play as well as adjacent senior citizen residential facilities. This issue will be discussed at more length in section 9, infra.

5. Prior Rail Operations

As Mr. Hall notes in his testimony, there is a one hundred plus year history of rail service in this area. See Hall statement at paragraph 8.

Although the property owned by SG was last used years ago as a lumber yard, it abuts the NYS&W mainline over which CSX Transportation also holds trackage rights and conducts operations. The line typically handles around three to four daily trains (approximately two roundtrips per day). The traffic generated by U S Rail at this location will not substantially increase the total amount of traffic moving over this line.

6. Eminent Domain Action

⁶ 49 CFR 1105.7(d)(5) and (6)

The City would have the Board believe that this case is a race between it and U S Rail as to who could file first. The City asserts that it initiated its eminent domain action before U S Rail could become a railroad and that U S Rail filed at the Board in order to thwart that proceeding. Accordingly, the City wants the Board to believe that precedent such as Jefferson Terminal⁷ justifies revocation (really rejection) of U S Rail's exemption for failure to disclose that action. In fact, the City has the chronology of facts wrong as Mr. Hall notes in his statement.

The genesis of this matter dates back to the summer of 2006 when U S Rail and SG first began negotiating arrangements for railroad operations in Paterson. Those discussions ultimately led to the execution of a lease and operating agreement between the parties on August 10, 2006. See Hall statement at paragraph 9.

It was not until arrangements for activation of rail service were well along that the City first contacted SG on February 12, 2007, in an effort to acquire the property by a \$1,260,000 cash offer. See City's "Opposition

⁷ Jefferson Terminal Railroad Co. - Acquisition and Operation Exemption - Crown Enterprises, Inc., STB Finance Docket No. 33950, served March 19, 2001

Statement" at 6. The City initiated condemnation litigation on May 15, 2007, after its informal attempts to acquire SG's property failed. Id. At no point did the City attempt to inform U S Rail of its condemnation efforts. In fact, the judge assigned to handle the condemnation action directed the City to amend its initial condemnation complaint to implead U S Rail as a real party in interest, a point that the City's counsel conveniently neglects to inform the STB. See, June 25, 2007, order attached to Hall statement as Exhibit 1.

7-8. Size of the City and the Site's Location

Paterson goes to great lengths to emphasize that U S Rail inaccurately estimated the City's population as 300,000 whereas the 2000 Census reveals there to be only 149,222 lawful residents. U S Rail does not consider this inadvertent discrepancy as material to the Board's determination of this Petition.

Similarly, Paterson alleges that the rail operation will have a much greater impact than would be the case if SG's property were on the outskirts of town because of the increased number of trucks traversing city streets. As noted above, the amount of truck traffic is still so small

as not to trigger the Board's environmental regulations. See discussion at pages 9-10, supra. Moreover, the amount of additional truck traffic that would be generated by U S Rail's operations would constitute only a miniscule fraction of the daily traffic volume within the City. U S Rail estimates that its activities would generate only 2000 rail car loads per year, which breaks down to a mere 32 truck loads per day. See Hall statement at paragraph 7.

9. Nature of the neighborhood

The City would have the Board believe that the predominant land use is residential, with 22 residential dwellings within 200 feet of the property line, versus 17 industrial properties. First, U S Rail contends that a comparison of the raw number of dwellings to the number of light industrial or commercial buildings is a highly misleading indicator of neighborhood character. A square footage-based comparison would be a far more appropriate indicator. On that basis, more than 75% of the land is devoted to light industrial or commercial use including the facilities that City witnesses Wagner and Smith represent. See Opposition Statement at pages 19-27.

Second, the residences exist only on the west side of the property, with the other three sides of the SG site facing or adjoining non-residential land. Several industrial neighbors directly border SG. The site, which was a long-time lumber yard, has always sat among a string of trackside businesses, and has never been a part of the residential character of the neighborhood immediately to its west.

Third, by emphasizing the site's proximity to a baseball diamond where small children are said to play, and to a senior citizen residential facility, the City evokes themes which shade the truth. Further refuting the City's assertions about the proximity of a baseball field and senior citizen facility, U S Rail submits a color aerial photograph accurately depicting the location of these facilities and their distance from SG's property. See, Exhibit 3 to Hall statement. The Board should note that the baseball field is on the other side of the NYS&W tracks, is separated from SG's property by a tall fence, and is, incidentally, utilized by adult softball teams, not youth teams. Moreover, only a 25 foot section of

outfield fence is tangent to the SG property line, and even that limited section is across the NYS&W tracks.

The senior citizen facility is located approximately three blocks and 1,400 feet south west of its nearest point to SG's property. U S Rail respectfully invites the Board to note the City's lack of candor in mischaracterizing the location of this senior citizen facility in relation to SG's land.

10. Nature of the Facility Planned by the City

The parties differ as to the use to which the City would put SG's property if condemned. U S Rail has said the City would take private industrial property and utilize it for a garage for City (Department of Public Works) dump trucks. The City claims that it would acquire the property so the same Department of Public Works could use it as an "indoor drive-through consumer recycling center," with access by citizen-owned automobiles and apparently City-owned trucks. In addition, documents attached to the City's filing also suggest that the City might choose to locate a salt storage unit and a salt truck garage on the SG property it wants to condemn. See Opposition Appendix page 15. It almost sounds like a distinction without much of a difference. But note that the City's use is neither

residential nor residential compatible. It does not propose to use the property for parks, playgrounds, athletic fields or facilities, or other uses attractive for small children or senior citizens. The Board is being asked to decide whether this property should be used for one industrial use [a transload facility] or another industrial use [taking the City at its word, a car and truck accessible recycling center along with a salt storage facility and salt truck garage]. This is not a choice the Board is either equipped or has the jurisdiction to make.

**Whether the Proposed Operation Qualifies
under the Exemption Standard**

Paterson's final argument is that under the Jefferson Terminal case U S Rail's exemption should be denied because (1) of a lack of continued rail service and (2) substantial government opposition based upon local concerns. In support of this argument, the City wrongly claims that this case is "remarkably similar" to the facts of Jefferson Terminal.

As a general proposition, the Board has noted that it (and the Interstate Commerce Commission before it) has a statutory duty to preserve and promote continued rail

service. Western Stock Show Assn - Aban. Exemption in Denver Co, 1 S.T.B. 113, 131 (1996). Here the crucial issue is not the absence of rail service at SG's facility immediately before U S Rail's filing but the fact that this location has consistently enjoyed rail service well before the year 1900. The fact that SG could have asked the NYS&W to serve it from the NYS&W mainline instead of employing U S Rail should make little difference.

Paterson's comparisons to Jefferson Terminal are similarly misplaced. As Mr. Hall testifies, SG's rail service preparations go back well before the City initiated its efforts to condemn the subject property. See, Hall statement paragraph 9. U S Rail had no desire to deceive anyone by failing to disclose the existence of the condemnation suit in its exemption notice. The Board's regulations do not require such information to be disclosed. Moreover, U S Rail was not a party to and did not have any official notice of this litigation at the time of its exemption filing. See, Hall statement paragraph 3. Finally, U S Rail understands that the railroad in Jefferson Terminal was established for the purpose of avoiding condemnation whereas U S Rail is an existing short line carrier looking for railroad marketing

and service opportunities in the New York Metropolitan Area.

As to Paterson's last assertion that substantial government opposition effectively forbids use of the class exemption, requiring exemption applicants to anticipate opposition before determining whether or not to use a class exemption would in many cases render useless the class exemption process contrary to Congressional intent. The Interstate Commerce Commission's 1986 ruling establishing the class exemption stated,

[u]nder the new rule, class exemptions may still be reviewed by the Commission. Any affected party can file a petition to revoke under section 10505(d) [now section 10502(d)] and attempt to show that regulation is necessary to carry out the rail transportation policy. In light of the explicit legislative directive to grant exemptions and then rely on after-the-fact remedies, including revocation, the potential for total or partial reimposition of regulation is always present. Accordingly, we reject protestants' argument that an after-the-fact remedy is not satisfactory. Class Exemption-Acq.& Oper. Of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810, 812.

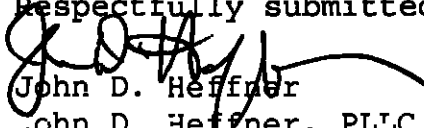
Paterson has shown no basis for regulation and therefore no basis for rejecting U S Rail's exemption.

CONCLUSION

The Board should deny the substance of the City of Paterson's "Statement of Opposition" as attempts to reject

U s Rail's lawful use of the class exemption at 49 CFR
1150.41 and allow that exemption to become effective
immediately.

Respectfully submitted,


John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
(202) 296-3334

Counsel for Petitioner

James H. M. Savage, Esq.
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
(202) 296-3335

Of counsel

Due: August 17, 2007

VERIFIED STATEMENT OF GABRIEL HALL

Gabriel Hall, of full age, being duly sworn, deposes and says:

1. I am the President of U S Rail Corporation (U S Rail). My office address is 7846 Central Avenue, Toledo, Ohio.
2. I make this verified statement upon personal knowledge as well as upon facts which have become know to me in my capacity as officer of this corporation.
3. At no time prior to filing this Notice of Exemption was U S Rail aware of the pendency of the eminent domain action between the City of Paterson and Shannon G (SG). U S Rail was not originally a party to the condemnation action, and U S Rail had no contact with the City prior to being served with the Amended Complaint. I am aware that the judge hearing the eminent domain case required the City to amend their original Complaint to include U S Rail as a party. See June 25, 2007 Order of Judge Passero, attached as Exhibit 1.
4. U S Rail freight traffic will be switched onto the New York Susquehanna & Western R. R. (NYS&W) tracks running alongside SG's Paterson facility. I am aware that NYS&W has submitted to the Board a letter dated June 11, 2007 which states, in pertinent part, "NYS&W...is prepared to honor its common carrier obligations[.]....If U S Rail were to obtain authority to operate and construct the rail facilities it describes in its Application, NYS&W would be prepared to negotiate appropriate arrangements [i.e. an interchange agreement] to permit service to the facility described in the exemption submissions." See G. Paul Moates June 11, 2007 letter, attached hereto as Exhibit 2.
5. The co-owners of Shannon G, far from being "uncertain", are John Lira, 692-694

Main Ave , Passaic, NJ 07055 and Stewart Kennedy, 55 Sleepy Hollow Drive, Wayne, NJ 07470 Mr Kennedy, incidentally, happens to be a law enforcement officer of the City of Passaic. Mr. Lira, I am informed, is politically active in Passaic County and a business acquaintance of the Mayor of Paterson.

6 At no time has U S Rail made any representations that it contemplates transloading waste at the Paterson facility Nor is U S Rail aware of any representations made by others in its behalf regarding the transloading of waste at the Paterson facility. Such representations, if any, would have been unauthorized, inaccurate and non-binding upon U S Rail. U S Rail has made its intention well known to the Board that it does not contemplate transloading waste.

7. U S Rail expects to switch approximately 2000 cars per year in the SG facility. Assuming operations occur 5 days per week for 50 weeks out of the year, the average number of cars switched per day would be 8. In that event, U S Rail would have a high degree of economic incentive to operate no more than one round trip train per day into the SG facility

8. The City concedes that rail operations took place on-site while the facility was a lumber yard from the 1930s to the 1960s There is no evidence before the Board of any non-rail usage of the site at any time. Restoring this dormant site to active and productive rail use would confer considerable economic benefit upon the community. Paterson has benefited from freight and passenger rail service for nearly two centuries. SG's proposed facility would be situated along the west side of the NYS&W tracks bisecting the City from north to south In addition to NYS&W traffic, CSX regularly operates freight trains along the NYS&W line. A New Jersey Transit Rail

commuter line runs parallel to the NYS&W, about three blocks to the west of SG's property. It is undisputed that train activity is a frequent, regular and proximate occurrence within the City of Paterson in general and this very neighborhood in particular.

9. U S Rail entered into negotiations with Shannon G beginning in July 2006, completing the lease agreement on August 10, 2006. Attachments to the City's opposition reveal that Paterson did not even develop a conceptual plan for using the site until October 20, 2006, at which time the Paterson Department of Public Works prepared a study for the reconfiguration of the DPW Yard. The limited portion of the Plan which the City appends to its opposition at pages 14 through 18 refers to a salt storage facility, truck garage and recycling depot occupying SG's property. The scheme contemplates allowing residents to drive up a ramp and dump recyclables into containers. The limited Plan revealed to the Board by the City does not indicate how the containers are to be hauled from the site. The City approached SG in February 2007 with an offer to buy the land for \$10,000 more than SG had paid for what had been a dormant parcel of land for almost 40 years before SG and U S Rail launched their redevelopment initiative. When SG declined to reap a 0.008% return on their \$1.25 million dollar investment, the City brought an eminent domain action to condemn SG's land. While there are many abandoned properties in economically distressed Paterson on which the City could develop a salt storage/recycling facility, there are an extremely finite number of parcels adjacent to the NYS&W's sole active freight rail line operating through Paterson.

10. The SG site sits at the edge of a commercial zone, bordered to the north, west

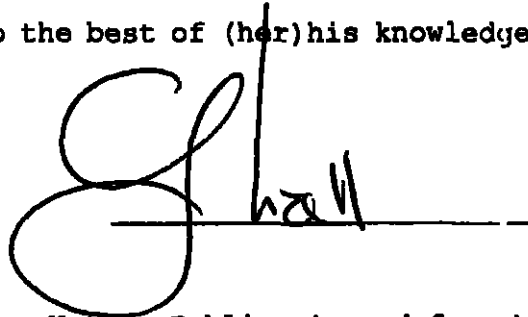
and south by non-residential neighbors. Only two residences at the east end of Lawrence Place (abut Shannon G's property line. See aerial photo map attached as Exhibit 3. These homes are separated from the commercial property by a fence. The senior citizen home mentioned by the City in its opposition papers is located 1400 feet and several blocks to the southwest of Shannon G's property, on the corner of Rosa Parks Boulevard and Governor Street, well beyond the 200 foot radius the City uses as the boundary for "sensitive receptors".

11. The City mentions the site's proximity of an existing Public Works facility. This facility lies directly across the NYS&W tracks to the east of Shannon G's property. There exists no bridge, grade crossing or other means of direct access from one side of the tracks to the other at this location. The City would necessarily have to utilize public streets to truck any materials between the DPW facility and the subject property.

VERIFICATION

STATE OF OHIO)
) SS
CITY OF TOLEDO)

Gabriel D. Hall, being duly sworn according to law, hereby deposes and states that (s)he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of (her)his knowledge, information and belief.

A handwritten signature in black ink, appearing to read 'G. Hall', is written over a horizontal line.

Subscribed and sworn to before me, a Notary Public, in and for the City of Toledo in the State of Ohio, this 17 day of August.

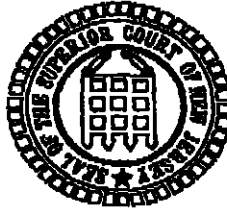
A handwritten signature in black ink, appearing to read 'Cynthia S. Kerr', is written over a horizontal line.
Notary Public

My Commission expires:

CYNTHIA S. KERR
Notary Public, State of Ohio
My Commission Expires 09-08-2011

Seal

EXHIBIT 1



FILED
JUN 25 2007
ROBERT J. PASSERO
ASSIGNMENT JUDGE

FILED
JUN 25 2007

ROBERT J. PASSERO
ASSIGNMENT JUDGE

PREPARED BY THE COURT

THE CITY OF PATERSON, by its
DEPARTMENT OF COMMUNITY
DEVELOPMENT

Plaintiffs

v.

SHANNON G, LLC A New Jersey LLC

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

DOCKET NO. PAS-L-1799-07

ORDER

THIS MATTER HAVING BEEN brought before the Court by Susan Champion, Esq., Corporation Counsel, through Paul J. Forsman, Assistant Corporation Counsel, and Ben-David Seligman, Assistant Corporation Counsel, attorneys for the plaintiff, The City of Paterson, by its Department of Community Development, and David M. DeClement, Esq., appearing on behalf of the defendant, Shannon G, LLC, and for good cause having been shown;

IT IS ON THIS 25th DAY OF JUNE, 2007,
ORDERED and ADJUDGED that:

1. Plaintiff shall amend the Verified Complaint under Docket PAS-L-1799-07, without the necessity of seeking leave of court, to add U.S. Rail, Inc. as a party;
2. Plaintiff shall duly file and serve the Amended Verified Complaint;
3. Plaintiff shall obtain a new property appraisal, which shall consider the lease between US Rail, Inc. and Shannon G, LLC;

4 The Defendant shall provide an "as built" and "historical" survey of the property;

5 Upon filing the Amended Verified Complaint, the parties shall confer with the Court to establish a briefing schedule as to the issue(s) of federal pre-emption under the Interstate Commerce Commission Termination Act of 1995 (ICCTA) and the issues of fact in dispute; and

6. The Order to Show Cause dated May 2, 2007 under Docket PAS-L-1799-07 is hereby denied. *W/Oresynovic AJO*

7. A copy of this Order shall be served upon counsel within seven (7) days of the date hereof.

For the reasons set forth by this Court on the record of June 8, 2007.

Dated: 6/15/07

Robert J. Passero
Robert J. Passero, A.J.S.C.

EXHIBIT 2



SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON D.C. 20005
(202) 736 8000
(202) 736 8711 FAX

pmoates@sidley.com
(202) 736-8175

BEIJING
BRUSSELS
CHICAGO
DALLAS
FRANKFURT
GENEVA
HONG KONG
LONDON

LOS ANGELES
NEW YORK
SAN FRANCISCO
SHANGHAI
SINGAPORE
SYDNEY
TOKYO
WASHINGTON D.C.

FOUNDED 1866

June 11, 2007

By Hand

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re U S Rail Corporation -- Lease and Operation Exemption -- Shannon G. S. B.
Finance Docket No. 35042

Dear Secretary Williams

On behalf of our client, The New York, Susquehanna and Western Railway Company ("NYS&W"), we write in response to the exemption submissions in the above-referenced docket.

Paragraph (7) of U S Rail Corporation's ("U S Rail's") Verified Notice of Exemption states that "U S Rail will provide daily switching and interchange service at this facility and anticipates handling in excess of 2000 car loads of freight per year which it will interchange with the [NYS&W]". NYS&W is concerned that the Board may interpret this statement as an indication that U S Rail and NYS&W have agreed on arrangements for the handling of traffic to the proposed facility. That is not the case. NYS&W has no relationship whatsoever to Shannon G., the entity identified in the submissions in this docket as the owner of the property which U S Rail indicates it will lease for purposes of its operations. Although NYS&W has engaged in verbal negotiations with U S Rail in regard to the potential track layout at the Paterson, New Jersey, site described in the U S Rail filings, no agreement has been reached. Accordingly, NYS&W wishes to clarify that although it is prepared to honor its common carrier obligation, there exists today no switch from NYS&W's lines into the property at issue, nor are there any U S Rail tracks on NYS&W's property that would permit interchange of traffic. Similarly, NYS&W has no agreements with U S Rail, whether for the interchange or switching of traffic or any other purpose.

Honorable Vernon A. Williams

June 11, 2007

Page 2

If U S Rail were to obtain authority to operate and construct the rail facilities it describes in its Application, NYS&W would be prepared to negotiate appropriate arrangements to permit service to the facility described in the exemption submissions. However, at this time NYS&W provides no service to this site.

Sincerely,



G. Paul Moates

cc: John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C 20036

EXHIBIT 3

MAPQUEST.

247 Fulton Pl
Paterson NJ
US

Notes:

Only text visible within note field will print.

ORBITZ = KEEPING YOU A STEP AHEAD



ORBITZ A STEP AHEAD



All rights reserved Use Subject to License/Copyright

This map is informational only. No representation is made or warranty given as to its content. User assumes all risk of use. MapQuest and its suppliers assume no responsibility for any loss or delay resulting from such use.

CERTIFICATE OF SERVICE

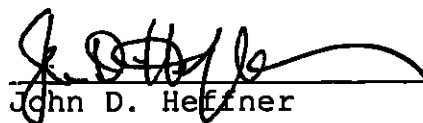
I, John D. Heffner, certify that a copy of the foregoing Reply of U S Rail Corporation to Opposition Statement of the City of Paterson, NJ was served on August 17, 2007 to the following:

Ben-David Seligman, Esq.
Law Department
155 Market Street
Paterson, NJ 07505

Ruth E. Carter, DAG
P.O. Box 093
Trenton, NJ 08625-0093

G. Paul Mottes, Esq.
Sidley Austin, LLP
1501 K Street, NW
Washington, DC 20005

David M. DeClement, Esq.
55 Simpson Avenue
P.O. Box 217
Pittman, NJ 08071


John D. Heffner